

LEGISLATURE OF NEBRASKA  
ONE HUNDREDTH LEGISLATURE  
SECOND SESSION  
**LEGISLATIVE BILL 179**

FINAL READING

Introduced by Lathrop, 12.

Read first time January 9, 2007

Committee: Judiciary

A BILL

1 FOR AN ACT relating to criminal procedure; to require electronic  
2 recording of custodial interrogations as prescribed; to  
3 define terms; to require jury instructions for failure to  
4 comply; to provide exceptions; and to address inaudible  
5 portions of recordings.

6 Be it enacted by the people of the State of Nebraska,

1           Section 1. The Legislature finds that to electronically  
2 record statements made during a custodial interrogation is  
3 an effective way to document a free, knowing, voluntary, and  
4 intelligent waiver of a person's right to remain silent, to agree  
5 to answer questions, to decide to have an attorney present during  
6 such questioning, and to decide to have an attorney provided to  
7 such person if he or she cannot afford an attorney, as provided  
8 by the Constitution of the United States and the Constitution  
9 of Nebraska. Providing a record of the statement made during a  
10 custodial interrogation and any waiver of constitutional rights  
11 will reduce speculation and claims that may arise as to the  
12 content of the statement. Such a record of the content of the  
13 statement will aid law enforcement officers in analyzing and  
14 rejecting untruthful statements and will aid the factfinder in  
15 determining whether a statement was freely, knowingly, voluntarily,  
16 and intelligently made.

17           Sec. 2. For purposes of sections 1 to 8 of this act:

18           (1) Custodial interrogation has the meaning prescribed to  
19 it under the Fourth and Fifth Amendments to the Constitution of the  
20 United States and Article I, sections 3 and 7, of the Constitution  
21 of Nebraska, as interpreted by the United States Supreme Court and  
22 the Nebraska Supreme Court;

23           (2) Electronically record means to record using an audio  
24 recording device, a digital recording device, or a video recording  
25 device;

1           (3) Place of detention means a police station, sheriff's  
2 office, troop headquarters, courthouse, county attorney's office,  
3 juvenile or adult correctional or holding facility, community  
4 correctional center, or building under the permanent control of  
5 law enforcement at which the person is in custody pursuant to the  
6 authority of a law enforcement officer; and

7           (4) Reasonable exception means circumstances in which:

8           (a) A statement was made when it was not practicable to  
9 electronically record the statement;

10          (b) Equipment to electronically record the statement  
11 could not be reasonably obtained;

12          (c) The person in custody refused to have the statement  
13 electronically recorded;

14          (d) The equipment used to electronically record the  
15 statement malfunctioned; or

16          (e) The law enforcement officer conducting the statement  
17 reasonably believed that the crime for which the person was taken  
18 into custody was not a crime described in subsection (2) of section  
19 3 of this act.

20           Sec. 3. (1) All statements relating to crimes described  
21 in subsection (2) of this section and statements regarding rights  
22 described in section 1 of this act or the waiver of such rights  
23 made during a custodial interrogation at a place of detention  
24 that are described in subsection (2) of this section shall be  
25 electronically recorded.

1           (2) Statements subject to subsection (1) of this section  
2 are those statements relating to:

3           (a) Crimes resulting in death or felonies involving  
4 (i) sexual assault, (ii) kidnapping, (iii) child abuse, or (iv)  
5 strangulation; or

6           (b) Offenses being investigated as part of the same  
7 course of conduct as the offenses described in subdivision (a) of  
8 this subsection.

9           Sec. 4. Except as otherwise provided in sections 5 to  
10 7 of this act, if a law enforcement officer fails to comply with  
11 section 3 of this act, a court shall instruct the jury that they  
12 may draw an adverse inference for the law enforcement officer's  
13 failure to comply with such section.

14           Sec. 5. (1) If a defendant testifies contrary to his  
15 or her statement made during a custodial interrogation at a place  
16 of detention which was not electronically recorded, such statement  
17 may be used for the purpose of impeachment if it is shown that  
18 the statement was freely, knowingly, voluntarily, and intelligently  
19 made.

20           (2) A jury instruction shall not be required if the  
21 prosecution proves, by a preponderance of the evidence, that  
22 there is a reasonable exception for there not being an electronic  
23 recording.

24           Sec. 6. If a law enforcement officer fails to comply with  
25 section 3 of this act, such failure shall not bar the use of any

1 evidence derived from such statement if the court determines that  
2 the evidence is otherwise admissible.

3           Sec. 7. Any statement made during a custodial  
4 interrogation shall be admissible against such person in a criminal  
5 proceeding in this state if:

6           (1) The statement was obtained in another state and was  
7 obtained in compliance with the laws of that state; or

8           (2) The statement was obtained by a federal law  
9 enforcement officer in this state or another state, was obtained in  
10 compliance with the laws of the United States, and was not taken  
11 by a federal law enforcement officer in an attempt to circumvent  
12 sections 1 to 8 of this act.

13           Sec. 8. The existence of inaudible portions of an  
14 electronic recording, which are not the result of bad faith by  
15 a law enforcement officer to produce an inaudible result, standing  
16 alone, shall not render a statement out of compliance with section  
17 3 of this act.